

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,923

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner is thirty-two-year-old woman with a high school education. From May, 1992, until August, 1993, the petitioner was employed as the manager of a convenience store. On August 27, 1993, she injured her back while at work and has not worked since.

The petitioner's injury was diagnosed as a "slipped disc" in her neck. This resulted in severe pain upon exertion or whenever the petitioner twisted her neck.

A chiropractor who treated her from the time of her injury until early January, 1994, has submitted a brief report stating that during the time of his care the petitioner was "unfit for work".

Following a protracted fight over workman's compensation coverage the petitioner underwent disc surgery

on June 7, 1994. A report from her surgeon, dated June 30, 1994, reads as follows:

This letter is to document the fact that [petitioner] had a "slipped disc" in her neck (between the 6th and 7th cervical vertebra), and that she underwent surgical treatment for this on 6/7/94 by me. She should wear a sponge rubber neck collar for two months (until approximately 8/7/94), and should not be lifting more than twenty pounds until 9/7/94 and then not more than 50 pounds up until 12/7/94.

This letter also is to document that in [petitioner's] opinion, she was having a sufficiently great amount

of pain and loss of left arm function and hand as to prevent her from working. I have no independent information which would refute her description concerning her pain level.

At her hearing, held on August 31, 1994, the petitioner testified that following her surgery she was unable to sit comfortably for more than a half hour because of lingering neck pain and hip pain from a surgical graft that was taken from there. The petitioner reported, however, that her doctor had "released her back to work" as of August 23, 1994, with the restriction that she not lift more than 20 to 25 pounds.

The main issue in this case is whether the petitioner was disabled from all work activity, including sedentary work, for a continuous period of twelve consecutive months.

Even in the best case scenario, however, (i.e., fully crediting the petitioner's allegations as to her pain and limitations) the petitioner falls four days short of a full twelve month period of disability.

The hearing officer finds, however, that the petitioner was capable of at least sedentary work on a part-time basis at least as of the first week of August, 1994, the date her surgeon indicated her neck collar could come off (see supra). And even before her surgery, the petitioner's various written statements made in connection with her application (dated May 11, 1994) do not indicate that she was having any difficulty in carrying on strictly sedentary activities.

Although this is an extremely close case in terms of the severity of the petitioner's impairment, and even closer from the standpoint of duration, it must be found that the petitioner simply was not disabled from all work activity for the requisite consecutive twelve-month period.

ORDER

The Department's decision is affirmed.

REASONS

Medicaid Manual Section M 211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

Although the evidence as to the degree of the petitioner's impairment is problematic (see supra), the above definition is clear that the disability must last "not fewer than 12 months". By the petitioner's own testimony and admission, her period of disability--even if it could be found to have been total for the entire period--is four days short of twelve months. Although the issue is close, it must be concluded that the above definition contemplates a duration period of twelve full months, which the petitioner in this

case simply has not met. Therefore, the Department's decision must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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